

SHARPNACK, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant Abel Lopez appeals his conviction of battery, a Class A misdemeanor. Ind. Code § 35-42-2-1.

We affirm.

ISSUE

Lopez presents one issue for our review which we restate as: whether there was sufficient evidence to rebut Lopez's claim of defense of a third party.

FACTS AND PROCEDURAL HISTORY

On October 7, 2007, Jesus Tecona was at his apartment drinking beer and watching boxing on television with his girlfriend, Elizabeth Najera, and his brother, Jose Castenada. Jose and Elizabeth went to bed. At approximately 1:30 a.m., Lopez, his two brothers, and another man arrived at the apartment and began drinking beer with Jesus. Jesus became upset due to the foul language being used by one of the men. Jesus told the man several times to stop using the foul language, but the man continued. Jesus told the man to leave, but the man became belligerent and acted as though he wanted to fight Jesus. He attempted to calm the man, but to no avail. Jesus then attempted to get all the men out of the apartment, but they would not leave. At that point, he woke Jose so that he could help in removing the men from the apartment. Jose told the men that he would call the police if they did not leave, but the men still would not leave. Lopez had been sleeping while all of this was occurring, but he awoke during the commotion and grabbed Jose by the neck from behind. The men exited the apartment and continued fighting

outside until the police arrived. The police arrested Lopez and charged him with two counts of battery and one count of public intoxication.

A bench trial was held on Lopez's charges. He was convicted of one count of battery upon Jose Castenada as a Class A misdemeanor and public intoxication as a Class B misdemeanor. The trial court sentenced Lopez to 365 days with 361 days suspended and probation for 361 days on the battery conviction and 180 days with 176 days suspended on the public intoxication conviction, all to be served concurrently. Lopez now appeals only his conviction of battery.

DISCUSSION AND DECISION

As his sole issue on appeal, Lopez contends that the State failed to disprove his claim of defense of a third party, specifically his brother. When reviewing a question of whether the State negated the defendant's claim of defense of another person beyond a reasonable doubt, our standard is the same as in any other challenge to the sufficiency of the evidence. *Hood v. State*, 877 N.E.2d 492, 497 (Ind. Ct. App. 2007), *trans. denied*. We neither weigh the evidence nor judge the credibility of the witnesses, and we consider only the evidence favorable to the verdict and all reasonable inferences which can be drawn therefrom. *Newman v. State*, 677 N.E.2d 590, 593 (Ind. Ct. App. 1997).

A person is justified in using reasonable force against another person to protect a third person from what he reasonably believes to be the imminent use of unlawful force. Ind.Code § 35-41-3-2(a). To prevail upon a claim of defense of another person, a defendant must show that he (1) was in a place where he had a right to be; (2) did not provoke, instigate, or participate willingly in the violence; and (3) had a reasonable fear

of death or great bodily harm. *See Wilcher v. State*, 771 N.E.2d 113, 116 (Ind. Ct. App. 2002), *trans. denied*. Once the defendant claims defense of another person, the State bears the burden of disproving at least one of the elements beyond a reasonable doubt. *See Hood*, 877 N.E.2d at 497. The State may meet its burden by rebutting the defense directly by affirmatively showing that the defendant did not act in defense of another, or by relying on the sufficiency of the evidence in its case-in-chief. *Green v. State*, 870 N.E.2d 560, 564 (Ind. Ct. App. 2007). A defendant's conviction, despite a claim of defense of another person, will not be reversed unless no reasonable person can say that the State negated the claim beyond a reasonable doubt. *Wilcher*, 771 N.E.2d at 116.

Here, the evidence favorable to the jury's verdict reveals that although Lopez had been allowed into the apartment, at the time that he put his hands around Jose's neck his invitation had been revoked and he had been asked to leave. In addition, Lopez willingly joined the fray. The testimony revealed that he woke up, and without knowing what was happening and whether his brother was in danger of death or great bodily harm, grabbed Jose's neck. The court, as fact-finder in this case, was not required to credit Lopez's testimony that he was acting in defense of his brother. *See Mariscal v. State*, 687 N.E.2d 378, 381 (Ind. Ct. App. 1997), *reh'g denied, trans. denied* (holding that whether State has disproved self-defense claim is question for trier of fact). The evidence favoring the verdict was sufficient to rebut Lopez's claim of defense of another person.

CONCLUSION

Based on the foregoing discussion and authorities, we conclude that the State presented evidence sufficient to negate Lopez's claim that he acted in defense of his brother.

Affirmed.

MATHIAS, J., and BROWN, J., concur.